

March 31, 2009

BY HAND

Honorable Denise L. Cote
United States District Judge
Southern District of New York
United States Courthouse
New York, New York 10007

Re: United States v. Frankie Perez
08 Cr. 798 (DLC)

Dear Judge Cote:

I write, in advance of sentencing in the above-captioned case, in response to the Government's letter dated March 27, 2009. In its letter, the Government indicates that it is prepared to offer evidence at a Fatico hearing regarding charges currently being investigated by the Bronx District Attorney's Office. Such a hearing is unnecessary in this case because all parties, including probation, agree on what the properly calculated guideline range is. Moreover, all parties, including probation, agree that no downward or upward departure or variance from the guideline range is appropriate in this case.

In the plea agreement, the parties specifically agreed that "neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court *sua sponte* consider such a departure or adjustment."

The defense's concern is that the Government's suggestion in its letter that a Fatico hearing may be necessary violates this portion of the plea agreement, in that it encourages the Court to *sua sponte* consider an upward departure based on other uncharged criminal conduct. The Government has reiterated via telephone today that it stands by the plea agreement, and agrees that no upward departure or variance from the guideline range is warranted in this case.

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In light of the agreement by all parties as to what the properly calculated guideline range is, no Fatico hearing is necessary in this case. The Court presently has sufficient information about both the offense conduct, and the history and characteristics of Mr. Perez from which to determine an appropriate sentence within the Stipulated Guideline range, without need to rely on any additional uncharged criminal conduct. For this reason, I ask that the sentencing proceed as scheduled on April 3, 2009 without a Fatico hearing.

Respectfully submitted,

Jennifer L. Brown
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cc: Howard Master, Esq.
Assistant United States Attorney